IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1959

No. 1023

JOHN A. DUNSCOMBE,
Appellant,

vs.

HAROLD C. SAYLE, Administrator of the Estate of Walter D. Sayle, Deceased,
Appellee.

BRIEF OF APPELLANT IN OPPOSITION TO MOTION OF APPELLEE TO DISMISS THE APPEAL.

JOHN WATTAWA,
1317 F Street, N. W.,
Washington 4, D. C.,
Attorney for Appellant.

E. L. MENDENHALL, INC., 1108 Oak Street, Kansas City 6, Mo. HArrison 1-2030

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1959.

No. 1023.

JOHN A. DUNSCOMBE,
Appellant,

vs.

HAROLD C. SAYLE, Administrator of the Estate of Walter D. Sayle, Deceased,
Appellee.

BRIEF OF APPELLANT IN OPPOSITION TO MOTION OF APPELLEE TO DISMISS THE APPEAL.

The brief of Appellee in support of his Motion to dismiss the Appeal fails to comply with the Court's Rules 16(b), 35(1), and 40, which would require the Motion and brief to point out why, as he asserts, the Appeal does not present a substantial Federal question, and to support his asserted grounds by citations of authorities.

It is not shown in the brief of Appellee in what respect a substantial Federal question is not raised, or that the Federal questions sought to be reviewed were not timely, or properly raised or expressly passed upon, or that the judgments on which the Appeal is taken rest on an adequate non-Federal basis.

Nor are authorities cited in Appellee's brief in support of his asserted grounds, from which it would follow that none such was available.

In *Kennedy* v. *McKee*, 142 U.S. 606, 611, 612, 12 S. Ct. Rep. 303, this Court said:

> "As no brief has been filed in behalf of the defendants in error, and as we are not informed by the record of the precise ground upon which the Court below proceeded, we will restrict our examination of the case to the single ground upon which the plaintiff in error questions the correctness of the judgment."

And in *I. T. S. Rubber Company* v. *Essex Rubber Company*, 272 U.S. 429, 431, 432, 47 S. Ct. Rep. 136:

> "In the brief for the I. T. S. Company, it is asserted, in general terms, that the action of the Essex Company in suits brought against its jobbers in the Sixth Circuit estops it from denying infringement here, and that the Circuit Court of Appeals erred in holding that it was not estopped by the decrees in such suits. The argument in the brief, however, specifies and deals with only one of such prior suits; *and there being no semblance of compliance with the requirement of Rule 25 of this Court, we will consider only the suit specifically relied upon.*" (Italics supplied).

As the movant herein cites no authorities in support of his asserted grounds; there is no question for the Court to consider.

Wherefore the Motion to dismiss the Appeal should be denied.

Respectfully submitted,

JOHN WATTAWA,
1317 F Street, N. W.,
Washington 4, D. C.,
Attorney for Appellant.